

**Stakeholder Workshop on Proposed Regulation Changes**  
**Proposed Amendments to Freshwater Wetland Regulations**  
**Self-Certification and Categorical Insignificant Alteration Permits**

August 15, 2007

DEM Office of Water Resources  
Conference Room 280C  
235 Promenade Street  
Providence, RI

Attendees:

Alicia Good, Assistant Director, DEM Office of Water Resources  
Russ Chateauneuf, Chief, DEM Groundwater & Wetlands Protection  
Ron Gagnon, Chief, Technical & Customer Assistance  
Chuck Horbert, DEM Freshwater Wetlands Program  
Marty Wencek, DEM Freshwater Wetlands Program  
Carol Murphy, DEM Freshwater Wetlands Program  
Lisa McGreavy, DEM Office of Water Resources  
Peter Lockwood, ENSR  
Peter Holmes, EPA  
Mike Dahlquist, RIDOT  
Eugenia Marks, RI Audubon

The workshop was opened at 10:10 A.M.

Russ Chateauneuf began the workshop by welcoming attendees and providing an overview of the proposed amendments. The department has two primary objectives in proposing the amendments: 1) to improve compliance, and 2) to provide a list of project types that are predicted to be low impact in order to offer the public some predictability and streamlining into the permitting process. If the public can target their project to fit within one of the nine defined categories, then they will know with some certainty that a permit issuance is likely. The new process will also help the department respond to the challenge of providing a streamline permitting process with limited staff resources as the current shortage is not expected to improve in the future.

**Comments on Appendix 3: Eligible Projects for Categorical Insignificant Alterations:**

Section 1.) New single-family dwelling or duplex where no fill or structures are located in a floodplain with conditions.

Eugenia Marks asked what is meant by the term “appropriate professional” in the wording “...as certified by an *appropriate professional*.”

Russ Chateauneuf responded that it depends on who prepares the application.

Peter Holmes concerned about how the department will enforce Categorical Insignificant alteration permits; what are the ramifications for permittee if violations are found? The proposed regulations should be more stringent.

Alicia Good responded that these would still be permits subject to the same enforcement actions as other wetland permits. The department can evaluate how stringent it needs to be during the application review process.

Eugenia Marks suggested rewording sentence following section (b) to improve clarity and Russ offered the following rewrite: “Where all proposed alteration in wetlands are restricted to existing paved, gravel, or lawn areas within perimeter or riverbank wetlands, and...”

### Section 3.) Additions or accessory structures to existing single-family dwellings...:

Eugenia Marks objected to allowing further intrusion into the wetland. Russ Chateauneuf responded that this is still a permit. The department will look closely at what is being proposed but considers it low impact.

### Section 5.) Projects on previously developed non-residential property less than 5 acres...:

Peter Lockwood expressed the need for the department to have discretion in clarifying the wording to limit the area to previously developed *non-wetland* non-residential property.

To clarify this section as was done in Section 1 above, the sentence following Section 5 (b) should be reworded as follows: “All proposed alteration in wetlands are restricted to existing paved, gravel, or lawn areas within perimeter or riverbank wetlands;”

### Section 7.) Replacement of existing or approved bridges and culverts...:

Mike Dahlquist reported that other states have a similar provision but they also allow location changes such as culvert relocations in some cases. Mike will provide Russ with further information.

Russ Chateauneuf responded that the department is interested in learning more and would be interested discussing the idea further in the future.

Peter Lockwood asked whether there might be some opportunities for expedited review for utility work in addition to bridges and culverts. In this case, the

projects would not be exempt but would not need a full review. Peter will send Russ examples for further review.

Section 9.) Demolition of an existing single-family dwelling and replacement with a new single family dwelling either completely or partially within a perimeter wetland or riverbank wetland...:

Eugenia Marks suggested adding a stipulation that the applicant first consider moving structures outside of wetlands or as far away from wetlands as possible if there is room on the property.

There also needs to be a distinction between *repair* and *replacement*. For example, if there was a fire in the kitchen that resulted in the house needing to be replaced, that should be considered an exception to rebuild in the wetlands; however if the applicant wants to replace something like an existing cellar hole with a new house, then this should not be considered a replacement entitled to the same exemption to rebuild in the wetland.

Marty Wencek responded that the current regulations do not compel the property owner to move elsewhere; it is considered an existing impact if the rebuilding is kept to the same location.

Chuck Horbert added that the department would not want to compel someone from moving to a different location if it would cause an impact to existing undisturbed forestland.

To clarify this section, the sentence following Section 9 (a) should be reworded as follows: “The new dwelling will be placed in the same location as the old dwelling or farther from wetlands in an existing cleared area of the parcel.”

General comments on Appendix 3:

Russ Chateauneuf asked the stakeholders whether they had any other examples of projects that could be eligible for categorical insignificant alterations.

Eugenia Marks suggested that wetland restoration projects should be included.

Russ Chateauneuf responded that the DEM Water Quality/Wetland Restoration Team was initiated a few years ago to offer expanded pre-application assistance for restoration projects and the team remains active today, meeting approximately twice per month.

### Comments on the Self-Certification Checklist:

Ron Gagnon provided an overview on the development of the checklist which is similar to what other divisions within the department have initiated (such as the Underground Storage Tank Program) in order to respond to limited staff resources to provide necessary compliance checks. Once in place, the department could gather compliance statistics to help target where we need to focus. For example, we may be able to say that 30% of permittees are not complying with limits of disturbance and we can then focus our compliance activities.

Alicia Good added that the department recognizes that the self-certification is a major change in that it shifts responsibility for compliance to the permittee but the department will also be doing inspections and random compliance checks as much as possible. Note that the checklist would be required for all types of wetland permits including preliminary determinations and significant alteration permits.

Russ Chateauneuf added that it may take the department a few years to gather the information that will help us focus our efforts so we need to start the process as soon as possible.

Eugenia Marks expressed concern that homeowners in general may not understand many of the questions asked in the checklist. There is a distinction between business owners and homeowners. Business owners may be more familiar with the regulations and better able to respond to the checklist. Also, the department should emphasize that there will be random compliance checks to compel property owners to take this seriously. Who will complete the forms? The checklist should be completed by a wetlands professional. What is the leverage against the homeowner?

Ron Gagnon responded that the checklist was designed to be as simple as possible, requiring only yes and no responses. The applicant would decide who completes the form. What is being proposed is better than the current system where compliance verification is not taking place as it should.

Russ Chateauneuf echoed Ron's comments adding that it became apparent to the department during the evaluation of the program that a large compliance problem exists today and something needs to be done now, even if it is only a first step.

Russ also relayed comments received by Joe Frisella who could not be at this meeting. Joe's concerns are that a professional should be hired to complete the form however it would add considerable costs to the permitting process.

Russ asked whether stakeholders thought a contractor could complete the checklist.

Eugenia Marks suggested that the department could work with the homebuilders association to add requirements similar to building code requirements. The department could offer education and training to builders. We need a strong approach given the need to protect wetlands. Handholding doesn't work, especially when there is not a budget to support it.

Chuck Horbert added that ultimately the property owner is responsible for compliance and the department generally can only encourage them to seek professional assistance.

Peter Holmes cited the need to report results to see if the new self-certification procedure is working.

Ron Gagnon responded that the department is planning to measure whether the program is working, evaluate findings, and make adjustments if necessary.

Peter Lockwood also expressed concern for the financial impact to property owners and suggested that homeowners not be required to hire a professional to complete the self-certification checklist. The department should instead consider conducting the inspections itself in some cases, at their discretion. Also concerned with asking someone without expertise to certify the checklist.

Ron Gagnon responded that certifying compliance for homebuilding should not be complex in most cases.

Alicia Good asked the stakeholders whether what is being proposed as a first step is worth pursuing.

Peter Lockwood responded that it has come apparent today that the self-certification was initiated more as a staffing issue than a plan to expedite the permitting process for the applicant.

Alicia Good responded that the checklist puts the burden on the applicant but the categorical insignificant alteration permit should help the applicant by expediting the process.

Eugenia Marks suggested that the certification process needs more thought on how it applies, and particularly the extent to which it applies. We already have a system for issuing occupancy permits, need something similar to protect the environment. Wetland and public health impacts are serious and we need something strong in response. We need to do this in a regulatory way; not just administratively.

Russ Chateauneuf responded to the comment that the self-certification adds costs to the homeowner. We may want to add an area for a contractor to sign off on the certification checklist. In many cases, the contractor is the only person involved during construction who would understand the requirements of the permit. He/she would also be responsible to adhere to permit conditions and be the person who's physical action must comply with the permit.

Eugenia Marks asked whether signing the form could be tied into the extent of the project, such as with defined triggers. For example, the department could define when a professional should sign the form; when a contractor should sign, and when only the property owner should sign. Need to make it clear who needs to sign the certification.

Russ Chateauneuf offered that the requirement for a professional to sign the certification could be addressed in a permit condition.

Peter Lockwood concerned that triggers would burden the regulations; perhaps the department could use their own discretion on a case-by-case basis.

Russ Chateaufneuf responded that triggers would be preferred.

Chuck Horbert agreed that deciding on a case-by-case basis would be time consuming for staff to evaluate; it should be across the board since triggers would be difficult as well.

Ron Gagnon suggested that the department could provide training and education for property owners.

Eugenia Marks supported the idea but noted that training could be limiting in the case when a homebuilder is only going to need to know how to do the self-certification a very limited number of times. Perhaps the department could develop a training DVD that could be provided with checklist recognizing that grant funding would be needed to support the project.

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#### Next Steps:

Lisa McGreavy will compile comments and post on DEM's website for those who could not make it here today.

The department will continue to take comments until the end of August.

There will be an internal review by the department and other state departments such as the governor's office, the budget office and the economic development office.

Then we will go to public notice and schedule a public hearing, approximately in October.

The workshop concluded at 11:45 A.M.